

ALBERTA INSURANCE COUNCIL
(the "AIC")

In the Matter of the *Insurance Act*, R.S.A. 2000 Chapter I-3
(the "Act")

And

In the Matter of Troy Lyle Zimmerling
(the "Agent")

DECISION
OF
The General Insurance Council
(the "Council")

This case involved an allegation pursuant to Section 481(2) of the Act. Specifically, it is alleged that the Agent failed or refused to provide information and documentation requested by an AIC investigator as specified in the Demand for Information (the "Demand"). In so doing, it is alleged that he contravened a section of the Act pursuant to s. 480(1)(b) of the Act.

Facts and Evidence

This matter proceeded by way of a written Report to Council dated September 25, 2014 (the "Report"). The Report was forwarded to the Agent for his review and to allow the Agent to provide the Council with any further evidence or submissions by way of Addendum. The Agent did not adduce any further evidence.

The Agent was the holder of an Insurance Agent's Certificate of Authority for the sale of general insurance and was licensed from October 25, 2010 until June 30, 2014 with "Agency A". On July 15, 2014, the AIC received a letter from a representative of Agency A that informed the AIC that it had terminated the Agent's employment. This was as a result of the Agent admitting to forging signatures on new applications and cancellation of insurance for customers.

The AIC wrote to the Agent by letter dated August 8, 2014. In this letter, the investigator informed the Agent that Agency A alleged that he signed clients' names on documents without the client's knowledge or consent and that, without the client's knowledge or consent, he transferred premium funds from a client's bank account into the Agent's own personal bank account.

As the Agent did not respond, the investigator sent the Agent a formal Demand by registered mail on August 25, 2014. This Demand letter required that the Agent provide a response by September 9, 2014. Canada post records indicate that the Agent retrieved the Demand on September 4, 2014. Once again, the Agent did not respond. The Report also indicates that the investigator spoke to the Agent and confirmed the Agent's mailing address and this corresponds with that used in making the Demand.

Decision of the Council

The AIC operates under a delegation from the Minister of Finance & Enterprise. Through this delegation, the AIC has authority to investigate complaints against holders and, like here, former holders of insurance agent certificates of authority. Pursuant to the Minister of Finance Directive No. 05/01, the Minister also delegated his powers under s. 481 to the AIC. Section 481 states that "[t]he Minister may direct the holder or former holder of a certificate of authority to provide to the Minister within a reasonable period of time specified by the Minister relating to the matters in section 480(1)." Subsection 2 states that the "...person served with the direction who has the information must provide the information in accordance with the direction."

The evidence is clear that the AIC investigator was investigating a complaint filed by the Agent's employer relating to conduct that could include misrepresentation, fraud, deceit, dishonesty or untrustworthiness as set out in s. 480(1)(a) of the Act. In furtherance of this investigation, the investigator sent the Demand to the Agent and it was successfully delivered. While the Agent spoke once with the investigator regarding the matter and confirmed contact information, the Agent has not responded to subsequent calls and letters. Therefore, it is clear to us in the circumstances that the Agent breached s. 481 and contravened a section of the Act as contemplated in s. 480(1)(b).

In terms of the applicable sanction, the public relies on the AIC to investigate complaints and the Act requires that holders, and even former holders such as the Agent, provide information when called upon to do so. Therefore, the public is not well-served in the event that agents simply ignore Demands like those made in this case. Given the facts in their entirety, we order that a civil penalty in the amount of \$1000.00 be levied against the Agent pursuant to s. 13(1)(b) of the *Certificate Expiry, Penalties and Fees Regulation*, A.R. 125/2001. The civil penalty must be paid within thirty (30) days of receiving this notice. In the event that the civil penalty is not paid within thirty (30) days, interest will begin to accrue and the Agent cannot hold a certificate of authority until payment of the penalty and any outstanding

interest is made. Pursuant to s. 482 of the Act (copy enclosed), the Agent has thirty (30) days in which to appeal this decision by filing a notice of appeal with the Office of the Superintendent of Insurance.

This Decision was made by way of a motion made and carried at a properly conducted meeting of the General Insurance Council. The motion was duly recorded in the minutes of that meeting.

Date: November 21, 2014

Original Signed By

Amanda Sawatzky, Chair
General Insurance Council

Extract from the *Insurance Act*, Chapter I-3**Appeal**

482 A decision of the Minister under this Part to refuse to issue, renew or reinstate a certificate of authority, to impose terms and conditions on a certificate of authority, to revoke or suspend a certificate of authority or to impose a penalty on the holder or former holder of a certificate of authority may be appealed in accordance with the regulations.

Extract from the *Insurance Councils Regulation*, Alberta Regulation 126/2001**Notice of appeal**

16(1) A person who is adversely affected by a decision of a council may appeal the decision by submitting a notice of appeal to the Superintendent within 30 days after the council has mailed the written notice of the decision to the person.

(2) The notice of appeal must contain the following:

- a) a copy of the written notice of the decision being appealed;
- b) a description of the relief requested by the appellant;
- c) the signature of the appellant or the appellant's lawyer;
- d) an address for service in Alberta for the appellant;
- e) an appeal fee of \$200 payable to the Provincial Treasurer.

(3) The Superintendent must notify the Minister and provide a copy of the notice of appeal to the council whose decision is being appealed when a notice of appeal has been submitted.

(4) If the appeal involves a suspension or revocation of a certificate of authority or a levy of a penalty, the council's decision is suspended until after the disposition of the appeal by a panel of the Appeal Board.

Address for Superintendent of Insurance:

Superintendent of Insurance
Alberta Finance
402 Terrace Building
9515-107 Street
Edmonton, Alberta T5K 2C3